



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART V

#### UNFAIR DISMISSAL

##### *Amount of compensation*

#### [<sup>F1</sup>72 Compensation for unfair dismissal.

Where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) the award shall consist of—

- (a) a basic award (calculated in accordance with section 73), and
- (b) a compensatory award (calculated in accordance with section 74), and
- (c) where the dismissal is to be regarded as unfair by virtue of section 58 or 59(a), a special award (calculated in accordance with section 75A);

but paragraph (c) shall not apply unless the complainant requested the tribunal to make an order under section 69, and shall not in any event apply in a case within section 73(2).]

#### Textual Amendments

- F1** S. 72 substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), s. 5(2) with saving in [S.I. 1982/1656](#), [Sch. 2](#)

#### [<sup>F2</sup>72A Reduction of compensation: matters to be disregarded.

- (1) This section applies in any case where a tribunal makes an award of compensation for unfair dismissal under section 68(2) or 71(2)(a) and the dismissal is to be regarded as unfair by virtue of section 58 or 59(a).

*Status: Point in time view as at 01/04/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Cross Heading: Amount of compensation. (See end of Document for details)*

- (2) In such a case the tribunal, in considering whether it would be just and equitable to reduce, or further reduce, the amount of any part of the award, shall disregard any conduct or action of the complainant in so far as it constitutes—
- (a) a breach, or proposed breach, of any requirement falling within subsection (3);
  - (b) a refusal, or proposed refusal, to comply with a requirement of a kind mentioned in section 58(13)(a); or
  - (c) an objection, or proposed objection, (however expressed) to the operation of a provision of a kind mentioned in section 58(13)(b).
- (3) A requirement falls within this subsection if it is imposed on the complainant in question by or under any arrangement or contract of employment or other agreement and requires him—
- (a) to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions;
  - (b) to cease to be, or refrain from becoming, a member of any trade union or of a particular trade union or of one of a number of particular trade unions; or
  - (c) not to take part in the activities of any trade union or of a particular trade union or of one of a number of particular trade unions.]

#### Textual Amendments

**F2** S. 72A inserted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), **s. 6** with saving in [S.I. 1982/1656, Sch. 2](#)

### 73 Calculation of basic award.

- (1) The amount of the basic award shall be the amount calculated in accordance with subsections (3) to (6), subject to—
- (a) subsection (2) of this section (which provides for an award of two weeks' pay in certain redundancy cases);
  - (b) <sup>F3F4</sup>(ba) subsection (7A) (which provides for the amount of the award to be reduced where the employee has unreasonably refused an offer of reinstatement);
  - (bb) subsection (7B) (which provides for the amount of the award to be reduced because of the employee's conduct);]
  - (c)
  - <sup>F5</sup>(d) subsection (9) (which provides for the amount of the award to be reduced where the employee received a payment in respect of redundancy); and
  - (e) section 76 (which prohibits compensation being awarded under this Part and under the <sup>M1</sup>Sex Discrimination Act 1975 or the <sup>M2</sup>Race Relations Act 1976 in respect of the same matter).
- (2) The amount of the basic award shall be two weeks' pay where the tribunal finds that the reason or principal reason for the dismissal of the employee was that he was redundant and the employee—
- (a) by virtue of section 82(5) or (6) is not, or if he were otherwise entitled would not be, entitled to a redundancy payment; or
  - (b) by virtue of the operation of section 84(1) is not treated as dismissed for the purposes of Part VI.

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- (3) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed, by starting at the end of that period and reckoning backwards the numbers of years of employment falling within that period, and allowing—
- (a) one and a half weeks' pay for each such year of employment <sup>F6</sup>in which the employee was not below the age of forty-one;
  - <sup>F7</sup>(b) one week's pay for each year of employment not falling within paragraph (a) <sup>F6</sup>in which the employee was not below the age of twenty-two; and
  - (c) half a week's pay for each such year of employment not falling within either of paragraphs (a) and (b).]
- (4) Where, in reckoning the number of years of employment in accordance with subsection (3), twenty years of employment have been reckoned no account shall be taken of any year of employment earlier than those twenty years.
- <sup>F8</sup>(4A) Where the dismissal is to be regarded as unfair by virtue of section 58 or 59(a), the amount of the basic award (before any reduction under the following provisions of this section) shall not be less than [<sup>F9</sup>£2,700].
- (4B) The Secretary of State may by order increase or further increase the minimum award provided for by subsection (4A), but no order shall be made under this subsection unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.]
- (5) Where in the case of an employee the effective date of termination is after the specified anniversary the amount of the basic award calculated in accordance with subsections (3) and (4) shall be reduced by the appropriate fraction.
- (6) In subsection (5) [<sup>F10</sup>“the specified anniversary” in relation to an employee means the sixty-fourth anniversary of the day of his birth], and “the appropriate fraction” means the fraction of which—
- (a) the numerator is the number of whole months reckoned from the specified anniversary in the period beginning with that anniversary and ending with the effective date of termination; and
  - (b) the denominator is twelve.
- (7)
- <sup>F11</sup><sup>F12</sup>(7A) Where the tribunal finds that the complainant has unreasonably refused an offer by the employer which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the tribunal shall reduce or further reduce the amount of the basic award to such an extent as it considers just and equitable having regard to that finding.
- (7B) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given), <sup>F13</sup> was such that it would be just and equitable to reduce or further reduce that amount of the basic award to any extent, the tribunal shall reduce or further reduce the amount accordingly.]
- <sup>F14</sup>(7C) Subsection (7B) shall not apply where the reason or principal reason for the dismissal was that the employee was redundant unless the dismissal is to be regarded as unfair by virtue of section 59(a), and in that event shall apply only to so much of the basic award as is payable because of subsection (4A).]

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(8)

- <sup>F15</sup>(9) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any redundancy payment awarded by the tribunal under Part VI in respect of the same dismissal or of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of Part VI or otherwise.

#### Textual Amendments

- F3** S. 73(1)(ba)(bb) inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 9(1)(2) and S.I. 1980/1170, art. 4, **Sch. 3**
- F4** S. 73(1)(b) repealed by Employment Act 1982 (c. 46, SIF 43:5), **Sch. 4** with saving in S.I. 1982/1656, **Sch. 2**
- F5** S. 73(1)(c) repealed with saving by Employment Act 1980 (c. 42, SIF 43:5), **Sch. 2** and S.I. 1980/1170, art. 4, **Sch. 3**
- F6** Words repealed with saving by Employment Act 1982 (c. 46, SIF 43:5), s. 20, Sch. 2 para. 5(2), **Sch. 4**
- F7** S. 73(3)(b)(c) substituted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 9(1)(3) and S.I. 1980/1170, art. 4, **Sch. 3**
- F8** S. 73(4A)(4B) inserted by Employment Act 1982 (c. 46, SIF 43:5), s. 4(1) with saving in S.I. 1982/1656, **Sch. 2**
- F9** Minimum award in s. 73(4A) increased (1.4.1992) by virtue of S.I. 1992/313, **art. 2(1)** (with effect as specified in art. 3).
- F10** Words substituted by Sex Discrimination Act 1986 (c. 59, SIF 106:1), s. 3(2)(3)
- F11** S. 73(7A)(7B) inserted with saving by Employment Act 1980 (c. 42, SIF 43:5), s. 9(1)(4) and S.I. 1980/1170, art. 4, **Sch. 3**
- F12** S. 73(7) repealed by Employment Act 1982 (c. 46, SIF 43:5), s. 4(2)(a), **Sch. 4** with saving in S.I. 1982/1656, **Sch. 2**
- F13** Words repealed by Employment Act 1982 (c. 46, SIF 43:5), s. 4(2)(b), **Sch. 4** with saving in S.I. 1982/1656, **Sch. 2**
- F14** S. 73(7C) added by Employment Act 1982 (c. 46, SIF 43:5), s. 4(2) with saving in S.I. 1982/1656, **Sch. 2**
- F15** S. 73(8) repealed with saving by Employment Act 1980 (c. 42, SIF 43:5), **Sch. 2** and S.I. 1980/1170, art. 4, **Sch. 3**

#### Marginal Citations

- M1** 1975 c. 65.  
**M2** 1976 c. 74.

## 74 Calculation of compensatory award.

- (1) Subject to sections 75 and 76, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
- (2) The said loss shall be taken to include—
- (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
  - (b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

*Status: Point in time view as at 01/04/1992.*

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- (3) The said loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy, whether in pursuance of Part VI or otherwise, shall include only the loss referable to the amount, if any, by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under <sup>F16</sup>section 73(7A) to (9)] in respect of the same dismissal.
- (4) In ascertaining the said loss the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or of Scotland, as the case may be.
- (5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and that question shall be determined as if no such pressure had been exercised.
- (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
- (7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of Part VI or otherwise, exceeds the amount of the basic award which would be payable but for section 73(9) that excess shall go to reduce the amount of the compensatory award.

#### Textual Amendments

**F16** Words substituted by [Employment Act 1982 \(c. 46, SIF 43:5\)](#), [Sch. 3 para. 23](#) with saving in [S.I. 1982/1656, Sch. 2](#)

## 75 Limit on compensation.

- (1) The amount of compensation awarded to a person under section 71(1) or of a compensatory award to a person calculated in accordance with section 74 shall not exceed <sup>F17</sup>£10,000].
- (2) The Secretary of State may by order increase the said limit of £5,200 or that limit as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3) It is hereby declared for the avoidance of doubt that the limit imposed by this section applies to the amount which the industrial tribunal would, apart from this section, otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and any reduction in the amount of the award required by any enactment or rule of law.

*Status: Point in time view as at 01/04/1992.*

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#### Textual Amendments

**F17** Limit in s. 75(1) increased (1.4.1991) by virtue of S.I. 1991/466, **art.2** (with **art. 3**)

#### [<sup>F18</sup>75A Calculation of special award.

- (1) Subject to the following provisions of this section, the amount of the special award shall be—
  - (a) one week's pay multiplied by 104, or
  - (b) [<sup>F19</sup>£13,400],
 whichever is the greater, but shall not exceed [<sup>F20</sup>£26,800].
- (2) If the award of compensation is made under section 71(2)(a) then, unless the employer satisfies the tribunal that it was not practicable to comply with the preceding order under section 69, the amount of the special award shall be increased to—
  - (a) one week's pay multiplied by 156, or
  - (b) [<sup>F21</sup>£20,100],
 whichever is the greater, but subject to the following provisions of this section.
- (3) In a case where the amount of the basic award is reduced under section 73(5), the amount of the special award shall be reduced by the same fraction.
- (4) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the special award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
- (5) Where the tribunal finds that the complainant has unreasonably—
  - (a) prevented an order under section 69 from being complied with; or
  - (b) refused an offer by the employer (made otherwise than in compliance with such an order) which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed;
 the tribunal shall reduce or further reduce the amount of the special award to such extent as it considers just and equitable having regard to that finding.
- (6) Where the employer has engaged a permanent replacement for the complainant, the tribunal shall not take that fact into account in determining, for the purposes of subsection (2), whether it was practicable to comply with an order under section 69 unless the employer shows that it was not practicable for him to arrange for the complainant's work to be done without engaging a permanent replacement.
- (7) The Secretary of State may by order increase any of the sums of £10,000, £20,000 and £15,000 specified in subsections (1) and (2), or any of those sums as from time to time increased under this subsection, but no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.]

#### Textual Amendments

**F18** S. 75A inserted by **Employment Act 1982 (c. 46, SIF 43:5)**, **s. 5(3)**, with saving in **S.I. 1982/1656, Sch. 2**

*Status: Point in time view as at 01/04/1992.*

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- F19** Sum in s. 75A(1) increased (1.4.1992) by virtue of [S.I. 1992/313, art. 2\(2\)](#) (with effect as specified in [art. 3](#)).
- F20** Sum in s. 75A(1) increased (1.4.1992) by virtue of [S.I. 1992/313, art. 2\(3\)](#) (with effect as specified in [art. 3](#)).
- F21** Sum in s. 75A(2) increased (1.4.1992) by virtue of [S.I. 1992/313, art. 2\(4\)](#) (with effect as specified in [art. 3](#)).

## **76 Compensation for act which is both sex or racial discrimination (or both) and unfair dismissal.**

- (1) Where compensation falls to be awarded in respect of any act both under the provisions of this Act relating to unfair dismissal and under one or both of the following Acts, namely the <sup>M3</sup>Sex Discrimination Act 1975 and the <sup>M4</sup>Race Relations Act 1976, an industrial tribunal shall not award compensation under any one of those two or, as the case may be, three Acts in respect of any loss or other matter which is or has been taken into account under the other or any other of them by the tribunal or another industrial tribunal in awarding compensation on the same or another complaint in respect of that act.
- (2) Without prejudice to section 75 (whether as enacted or as applied by section 65 of the Sex Discrimination Act 1975 or section 56 of the Race Relations Act 1976) in a case to which subsection (1) applies, the aggregate of the following amounts of compensation awarded by an industrial tribunal, that is to say—
- (a) any compensation awarded under the said Act of 1975; and
  - (b) any compensation awarded under the said Act of 1976; and
  - (c) any compensation awarded under section 71(1) or, as the case may be, which is calculated in accordance with section 74.
- shall not exceed the limit for the time being imposed by section 75.

### **Marginal Citations**

- M3** 1975 c. 65.  
**M4** 1976 c. 74.

## **[<sup>F22</sup>76A Awards against third parties.**

- (1) If in proceedings before an industrial tribunal on a complaint against an employer under section 67 either the employer or the complainant claims—
- (a) that the employer was induced to dismiss the complainant by pressure which a trade union or other person exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so, and
  - (b) that the pressure was exercised because the complainant was not a member of any trade union or of a particular trade union or of one of a number of particular trade unions,
- the employer or the complainant may request the tribunal to direct that the person who he claims exercised the pressure be joined, or in Scotland sisted, as a party to the proceedings.

*Status: Point in time view as at 01/04/1992.*

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- (2) A request under subsection (1) shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made an award under section 68(2) or an order under section 69.
- (3) Where a person has been joined, or in Scotland sisted, as a party to proceedings before an industrial tribunal by virtue of subsection (1) and the tribunal—
  - (a) makes an award of compensation under section 68(2) or 71(2)(a) or (b), but
  - (b) finds that the claim mentioned in subsection (1) is well-founded,
 the award may be made against that person instead of against the employer, or partly against that person and partly against the employer, as the tribunal may consider just and equitable in the circumstances.]

**Textual Amendments**

**F22** S. 76A substituted by Employment Act 1982 (c. 46, SIF 43:5), s. 7 with saving in S.I. 1982/1656, Sch. 2

<sup>F23</sup>~~76B~~, .....  
76C

**Textual Amendments**

**F23** Ss. 76B, 76C repealed by Employment Act 1982 (c. 46, SIF 43:5), Sch. 4 with saving in S.I. 1982/1656, Sch. 2 and expressed to be repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)



**Status:**

Point in time view as at 01/04/1992.

**Changes to legislation:**

There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Cross Heading: Amount of compensation.